

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

KENN A. DEFREITAS,	:	CIVIL ACTION
Plaintiff	:	
	:	
v.	:	NO. 08-5330
	:	
MONTGOMERY COUNTY	:	
CORRECTIONAL FACILITY, et al.	:	
Defendants	:	

ORDER

AND NOW, this 10th day of January, 2011, upon careful and independent consideration of the defendants' motions to dismiss plaintiff's first amended complaint (Doc. # 23, Doc. # 24, and Doc. # 25), and after review of the thorough and well-reasoned Report and Recommendation of United States Magistrate Judge Linda K. Caracappa, it is hereby ORDERED that:

1. The Partial Objections of Defendants Correctional Medical Care, Inc., Nikki Holler, and Mary Williams to Report and Recommendation of Magistrate Judge Regarding Their Motion to Dismiss (Doc. # 37) are **OVERRULED**;
2. The Partial Objections of Defendants Montgomery County, Montgomery County Correctional Facility, Lieutenant Bates, Corporal Burger, Captain Paul Carbo, Major Albert Ottinger, Assistant Warden Catania, Assistant Warden James A. Frey, Corporal Palmer, Deputy Warden Dennis J. Molyneaux, Correctional Officer Griffin, and Correctional Officer Hittel to

the Report and Recommendation of the Magistrate Judge Regarding Their Motion to Dismiss (Doc. # 38) are OVERRULED;¹

3. The Partial Objections of Plaintiff Kenn A. Defreitas to the Report and Recommendation of Magistrate Judge Linda K. Caracappa (Doc. # 39) are OVERRULED;
4. The Report and Recommendation is APPROVED and ADOPTED;
5. Count I shall remain against Defendants Montgomery County and Correctional Medical Care, Inc.;
6. Count II shall remain against Defendants Montgomery County and Montgomery County Correctional Facility;
7. Count III shall be dismissed against all Defendants;
8. Count IV shall be dismissed against all Defendants; and
9. Count V shall be dismissed against all Defendants.

BY THE COURT:

/s/ LAWRENCE F. STENGEL
LAWRENCE F. STENGEL, J.

¹ Both the Correctional Care defendants and the Montgomery County defendants contend the Report and Recommendation did not address whether there was an underlying constitutional violation. I find plaintiff alleged sufficient facts to state an Eight Amendment violation for deprivation “of the minimal civilized measure of life’s necessities.” Muhammad v. Dept. of Corr., 645 F. Supp. 2d 299, 314 (D.N.J. 2008) (quoting Griffin v. Vaughn, 112 F.3d 703, 709 (3d Cir.1997)).